

(Working Notes)

**TOWN OF ROCKY HILL
OPEN SPACE AND CONSERVATION COMMISSION
MEETING OF AUGUST 13, 2014**

1. CALL TO ORDER

Chairman Ed Charamut called the Wednesday, August 13, 2014 meeting to order at 6:03 p.m. in the Town Council Room of the Rocky Hill Town Hall, 761 Old Main Street, Rocky Hill, Connecticut, 06067.

Present: Ed Charamut, Chairman
 Sandra Kelly, Secretary
 Todd Brown, Commissioner
 David Schweitzer, Commissioner
 Scott Stevens, Commissioner
 Larry Lindenberger, Commissioner (leaves at 8:26 p.m.)

Alternates: Christopher Duff
 Michelle Zak

Also: Bob Alvarado, Engineering Dept.
 Eileen A. Knapp, Recording Secretary

2. PLEDGE OF ALLEGIANCE

Everyone stood and recited the Pledge of Allegiance.

3. SHOW CAUSE HEARINGS

A. ADC Enterprises – Violation at 45 Evans Road

Chairman Charamut recused himself for this application. Commissioner Duff sat in his place. Commissioner Zak sat in for Commissioner Riedinger, who was absent. Commissioner Kelly sat in as Acting Chairman for this hearing.

A MOTION was made by Commissioner Lindenberger to open the Show Cause Hearing for ADC Enterprises – Violation at 45 Evans Road. Seconded by Commissioner Duff. All were in favor, MOTION CARRIED UNANIMOUSLY. (Chairman Charamut recused himself for this hearing. Commissioner Duff sat in his place. Commissioner Zak sat in for Commissioner Riedinger, who was absent. Commissioner Kelly sat in as Acting Chairman for this hearing.)

Mr. Alvarado said Mr. Chiulli was asked to attend this meeting to address the violations on his property at 45 Evans Road that were done without the benefit of a permit. He went over the reasons for this show cause hearing and presented several exhibits including the following exhibits:

Exhibit A – Cease and desist order issued on August 4, 2014

Exhibit B – Pictures taken of the bank

Exhibit C – Before and after pictures of the area

Exhibit D – Pictometry mapping of the site

There were also several letters from the DEEP and the Army Corp of Engineers to Mr. Chiulli and the Town Staff explaining their jurisdiction and permitting process. The DEEP and the Army Corp of Engineers are heavily involved in this situation because of their jurisdictional line at the 3.4 elevation line. He DEEP stated that if the banks are unstable, that can cause an adverse impact to the Connecticut River. Steps must be taken and a plan must be provided and approved by the DEEP and local Boards to assure the Connecticut River is not adversely impacted by this violation.

Mr. Alfred Chiulli address as owner of 45 Evans Road. He said before he started any work on this site, he was in contact with the DEEP and the Army Corp of Engineers. He said the clearing was done to protect his dock and property from falling trees. He also removed discarded debris that was located along the river's bank. Mr. Chiulli said he also met with staff from the Economic Development Committee to let them know that he planned on building a restaurant/banquet hall and a marina at the site. He said he has a permit for the dock since 1963 and he has since submitted a Certificate of Permission (COP) to the DEEP, which would allow him to enhance the dock that is currently there. He didn't believe he needed any permits because he wasn't changing the zone or changing the use. Mr. Chiulli also had a packet of pictures and information for the Commission.

As far as the silt fencing, the DEEP does not want silt fencing put in because the property is already stable. The only area washing out on the property is where there is a 54" concrete pipe owned by the Town that crosses his property. Mr. Chiulli said he received a letter from the DEEP allowing him to remove any debris from the bank as long as there are no machines below the NAVD88 3.4 line. He said he never went in the water, never dug anything or filled anything. The letter from the DEEP did not specify which trees could or could not be cut. Most of the trees he cut were diseased or rotten. He said just about all of the trees have started growing back already. When he asked the DEEP if anything needs to be done to the slope they told him to do "nothing" because there is no runoff or washout. They did ask him to remove the debris on the riverbank, but Mr. Chiulli said he doesn't want to do anything else on the property until the cease and desist order is addressed.

Mr. Chiulli said he doesn't believe there were any violations at his property. He agreed that he should have come before the Board before cutting the trees. He said he plans to withdraw his

request for a Certificate of Permission with the DEEP for the dock and he will be submitting a full application for the marina in the future. He has hired a surveyor to determine where the NAVD88 3.4 line is along with any other jurisdictional lines on the slope. At this point he would just like permission to remove the debris that remains on the slope.

Mr. Alvarado said Mr. Chiulli mentioned the problem with a Town pipe that is on his property, but that is not why they are here tonight. The reason for this show cause hearing is because the bank on Mr. Chiulli's property has been completely clear cut. Mr. Alvarado read from a letter from the DEEP that states, "Due to the activity of clear cutting the bank has destabilized and fill has fallen down the slope and into the Connecticut River." Also the letter continues, "Please provide a sediment and erosion control plan for the shoreline of your property to prevent further sediment into the Connecticut River. Such plan should include the installation of silt fencing with hay bales at the toe of the slope to prevent additional debris from falling into the Connecticut River." The DEEP also asked for a survey of the property. Mr. Chiulli responded by saying that after that letter was sent, a Supervisor from the DEEP visited the site and verbally gave it a "clean bill of health". Mr. Alvarado said they have nothing in writing to that effect. Mr. Chiulli said he has hundreds of letters of correspondence from the DEEP. He did cut the trees but he thought that would be allowed under his permit from 1963.

Mrs. Laura Chiulli addressed the Commission as an Officer of ADC Enterprises. She said she has an e-mail dated August 8th from Kevin Zawoy of the DEEP that says, "I do not see any evidence of shoreline erosion since the embankment has not been modified."

Commissioner Comments/Questions

Commissioner Stevens said that a lot of the confusion might be because there are different agencies that have jurisdiction over different areas of the bank. Some of the letters may only apply to certain parts of the slope, not the entire slope. Mr. Chiulli said that is why he hired someone to pin the docks and the slope so they know where the jurisdictions lie. He agrees that he did cut trees that were both above and below the NAVD88 3.4 line, but he also claimed that Town Planner Ricci and the Economic Development Commission were aware of what he was doing.

Commissioner Duff asked what they should do now as far as the condition of the bank and the need for erosion control measures. Mr. Chiulli again stated that the DEEP doesn't want him to touch the bank because they feel it's stable. All trees and grass have begun to grow back and he invited the Commission members to visit the site to see for themselves. There is some debris that needs to be removed from the area. Mr. Chiulli showed the Commissioners pictures of the area that he took on his cell phone.

Commissioner Schweitzer asked about the parking lot drainage. Mr. Chiulli said some of the water flows through pipes and into the back of the property. Any water in front of the building goes into an RCP pipe and eventually into the Connecticut River. The areas that are dirt are pitched away from the river. Commissioner Schweitzer asked when the survey would be completed. Mr. Chiulli said he doesn't know but he asked the Surveyor to complete it as soon as possible. He is hoping to have the marina up and running by next spring. Commissioner

Schweitzer asked if a wetlands scientist has been on the property to stake out any wetland areas. Mr. Chiulli said there are no wetlands on the property.

Commissioner Lindenberg said Mr. Chiulli has been doing business in Rocky Hill for a long time and he feels he should be familiar with the Town's Regulations and permitting process. Mr. Chiulli said before he did the work, he spoke with someone from Economic Development and Mrs. Ricci so they were aware of what he was planning to do. He said he even sent a letter from the DEEP saying that he had permission to cut down trees. The permit from 1963 gives him permission to maintain his dock. Commissioner Lindenberg said, looking at that permit, it was issued by the Waters Resources Commission, which may not even exist anymore and it was issued to the Tennessee Gas Transmission Company out of Houston. The permit is for the pier and the usefulness of the pier to pump petroleum products out of barges. He said he doesn't believe the certificate applies to creating a marina. The certificate also states that "it is subject to any and all public and private rights and to any Federal, State or Local laws or regulations that are pertinent to the property or activity affected hereby." Mr. Chiulli said he agrees to a point and that is why he submitted a Certificate of Permission to the DEEP to allow him to put boats at this dock. Commissioner Lindenberg said the bank may be stable now, even with the rains, but he is more concerned about what will happen when the bank floods. Mr. Alvarado said he believes there is the potential for erosion along that bank because it is exposed right now. Commissioner Lindenberg said he believes there needs to be some type of restoration to protect the bank. Mr. Chiulli said the Commission needs to visit the site before they draw any conclusions because he feels the bank is stable. Commissioner Brown questioned Mr. Chiulli's claims that the bank is stable. Chiulli said the roots are still there, no dirt has been removed and the DEEP has asked him to leave the bank as is. Commissioner Lindenberg said he would like to hear an expert give his position about the stability of the slope. Mr. Chiulli said he would try to get a letter from the DEEP or have a representative appear at the next meeting. He doesn't feel he should have to incur the expense of engaging an expert before the Commission visits the property.

Acting Chairperson Kelly asked if this might be a situation where they could request a third party review. Mr. Alvarado said he thinks it would be a good idea to contact the Connecticut River Coastal Conservation District, which offers a free service, to take a look at the bank. They would be able to determine if the bank is stable, and if not, what kind of action is needed to prevent erosion. It may even be necessary to engage a Wetland Scientist or Environmentalist to provide a report about the stability of the bank.

Commissioner Stevens said he would like confirmation about the wetlands soils that are or are not present on the site. He asked why Mr. Chiulli felt he needed to clear cut the entire area in order to maintain the dock. Mr. Chiulli said they started removing trees that were falling down and as they started clearing, they found the trees were all connected by vines at the top. As they cut the trees other trees started coming down also because they were intertwined. He said he has pictures of the work as it was done that he would show the Commission. They did leave 4 or 5 trees but he was told by 2 tree experts that they were not worth saving. Commissioner Stevens said usually before you start a project like this you develop a plan and follow certain steps. That did not take place in this situation. Mr. Chiulli said he would have done that if there was any excavation being done, but they were only clearing trees. The DEEP and Army Corp of

Engineers said they didn't want him to dig up the riverbed. Commissioner Stevens said he would like to see these letters from the DEEP stating that they don't want any action taken on the slope. Mr. Chiulli said he would like the Commission to visit the site and have the survey completed. Commissioner Stevens said he still would like a report by a Registered Soil Scientist regarding wetlands on the site.

Commissioners Zak and Brown agreed with previous statements by the other Commissioners. Commissioner Zak said the letter from the DEEP states that Mr. Chiulli could pull trees "out of the Connecticut River", but what he actually did was clear cut the entire bank. Mr. Chiulli said the letter never stated how many trees he could or could not remove.

Commissioner Brown said the Commission's jurisdiction is within 100' of any wetlands and he asked if Mr. Chiulli understood that what he did broke the law. Mr. Chiulli said he did not realize at the time that he was breaking any laws. Commissioner Brown said the stumps that are left are not as strong as the trees and foliage that used to be on the bank. Mr. Chiulli disagreed with that statement because the trees he removed were unstable. Commissioner Brown said he doesn't believe the permit from 1963 allowed for the clear cutting of trees along the bank, and this has created problems that now need to be rectified.

The Commissioner decided to schedule a site visit as soon as possible. Mr. Alvarado said he would contact CRCCD to see if they feel the clearing of the bank that occurred has a negative or adverse impact on the Connecticut River and if so, what steps need to be taken to secure the slope and minimize any further erosion. He will see if they have a Wetlands and/or Soil Scientist who would be able to evaluate the site for wetlands.

The Commission took a 5-minute break.

A MOTION was made by Commissioner Duff to table the Show Cause Hearing for ADC Enterprises – Violation at 45 Evans Road. Seconded by Commissioner Schweitzer. All were in favor, MOTION CARRIED UNANIMOUSLY.

B. Greg Lichatz – Violation at 273 Meadow Road

Chairman Charamut resumes his seat on the Commission.

Mr. Alvarado explained why the Commission requested Mr. Lichatz's appearance here tonight. The violation occurred sometime in 2012, when Mr. Lichatz was cited by the DEEP. Mr. Lichatz developed a plan in 2013, which was approved for the restoration of that bank. The plan was subsequently amended on January 2, 2014 to allow for riprap to be placed below elevation NAVD88 3.4. When the as-built was received by the Town, it was discovered that a lot of the riprap was placed well above elevation 3.4. Staff attached maps showing pictures of the area. The DEEP will be asking Mr. Lichatz to file an application for a permit through the DEEP and they are asking this Commission to also require that an application be filed for the work that has already been done. The Town's cease and desist order requests that any rocks above the 3.4 line be either removed. Mr. Alvarado also noted that riprap was placed along the toe of the slope, the southeast side of the property and along the parking lot.

Mr. Greg Lichatz of 273 Meadow Road addressed the Commission. He said he just did a little more than the DEEP told him to do. The person who did the work changed the specs because he felt the specs provided would not work. Mr. Lichatz said he previously tried to stabilize the bank by using turf but the turf eroded within 8 months. The reason for the riprap is erosion control, although it is also decorative. He thought all the work was within the jurisdictional line and it wasn't until he did the as-built that he realized he was 5-6' above that line. He said he did put decorative stone on the south side because his neighbor doesn't want people going on his property so this serves as a "fence" between the properties.

Commissioner Comments/Questions

Commissioner Duff asked if the timber piles have been removed. Mr. Alvarado said that work was already done. If the survey of the 3.4' line was done before the work was started they would have realized the Mr. Lichatz needed a permit for the work that was above that line. Commissioner Duff asked if it is Staff's wish to have the rocks removed, or would that cause too many impacts to the riverbank. Mr. Alvarado said Staff needed to issue the cease and desist order to have the rocks removed because there is no permit for them to be placed there. Mr. Lichatz is requesting that the rocks be allowed to stay where they are. In order for that to occur, he would need to get a permit for them. He does agree that if the plan was done according to the specs, it would not look right, nor would it provide any erosion control.

Commissioner Schweitzer said he likes the way the rocks look and he would not be in favor of removing the rocks and exposing the bare earth.

Commissioner Lindenberger said when they realized the original plan was not going to work; Mr. Lichatz should have gotten the proper permits at that time. He does think the bank looks stable at this point and the rocks should probably remain. He asked if the bank in the area is mowed. Mr. Lichatz said he hasn't touched it since he received the cease and desist order. Commissioner Lindenberger wondered if it would be better to have a low maintenance grass or ground cover to keep the rocks in place.

Vice Chairman Kelly agreed that it would be best to leave the rocks at this point. In the future, she would hope Mr. Lichatz would get the permit first before doing any work. Commissioners Brown, Zak and Stevens agreed with the comments of the previous Commissioners. Commissioner Brown asked that Mr. Lichatz come back next spring to let the Commission know how the rocks are holding up.

Chairman Charamut again stressed the importance of following the proper procedures for gaining permits before commencing work.

A MOTION was made by Commissioner Kelly to close the Show Cause Hearing for Greg Lichatz – Violation at 273 Meadow Road. Seconded by Commissioner Lindenberger. All were in favor, MOTION CARRIED UNANIMOUSLY.

4. ACTION ON SHOW CAUSE HEARINGS

A. ADC Enterprises – Violation at 45 Evans Road

This Show Cause Hearing was tabled.

B. Greg Lichatz-Violation at 273 Meadow Road

A MOTION was made by Commissioner Lindenberger to lift the Cease and Desist order for the Violation at 273 Meadow Road. Seconded by Commissioner Kelly. All were in favor, MOTION CARRIED UNANIMOUSLY.

A MOTION was made by Commissioner Lindenberger to require Mr. Lichatz Road to file an application for the work already done at 273 Meadow Road. Seconded by Commissioner Schweitzer. All were in favor, MOTION CARRIED UNANIMOUSLY.

5. PUBLIC

(Commissioner Lindenberger leaves at 8:26 p.m.)

Mr. Jim Zagroba of 263 Meadow Road addressed the Commission stating that he is disappointed that the Commission took action on the show cause hearings without the benefit of hearing input from the public. He said the owner of 273 Meadow Road has a history of performing work without permits then this Commissioner allows it to remain. He has been issued several notices of violations and this Commission should be aware of that. When asked by Mr. Zagroba and the Town Engineer, Jim Sollmi, Mr. Lichatz claimed he had a permit. Mr. Sollmi never asked to see the permit and no one in Town Hall had a copy of the permit. Mr. Zagroba went to the Office of Long Island Sound and spoke with Mr. Golembiewski, who said action would be taken regarding this violation.

Mr. Zagroba distributed a handout to the Commissioners showing the chronology of the violation, including pictures. He said he wants to Commission to see the erosion effects on his property. Mr. Zagroba said a motion was made 10 years ago asking Mr. Alvarado to study the impacts of the erosion and that has never been done. The erosion in the area is the worst he has ever seen and now the addition of the boulders is only going to make the situation worse. Mr. Zagroba also showed the plan of what the DEEP permitted Mr. Lichatz to do, which was to put in, not one, but a strip of boulders at the bottom of the turf area. The boulders were only supposed to be 3' boulders; this is not what Mr. Lichatz put in.

Ms. Krista Mariner of 58 Farms Village Road addressed the Commission and first commended them on the attendance of some of the members at the first Plan of Conservation and Development Update meeting. She is frustrated because at a past show cause hearing, the public was allowed to speak during the hearing. This did not occur tonight and it was unfortunate because the abutting property owner had information that would have been helpful to the Commission before they took action. She submitted an article from the Rocky Hill Life from July showing the work being done at the site.

Mr. Ryan Jordan of 22 Burwood Road, Wethersfield addressed the Commission to express his displeasure with the Town Center West project. This used to be a nice area of undisturbed land and today it is more obvious than ever that taking better care of the environment is the way to go when possible. This is the type of area that should be protected. He asked the Commission to think about what they are doing to this parcel for the purpose of economic development. There are plenty of underperforming strip malls in the area along with leasable buildings that can be utilized instead. The presence of natural land is what makes a Town more interesting.

Commissioner Duff noted that when Mr. Lichatz comes back with his application, the Commission can still make conditions, including monitoring the erosion on the neighboring property. As far as the Town Center West project, that land was owned by CL&P. CL&P chose to sell the property to the developers and this Commission can only try to make development as environmentally friendly as possible. The Town has approved \$10,000,000 to be used for the purchase of open space when properties become available. When a development comes before them, they can only act within their Regulations. He pointed out that the public can attend the Planning and Zoning meetings regarding the POCD update. This is an opportunity for the public to become involved in deciding the direction they want the Town to move in as far as future development.

6. MINUTES/WORKING NOTES presented for approval for May 14, 2014

A MOTION was made by Commissioner Kelly to approve the minutes and working notes of May 14, 2014 with changes. Seconded by Commissioner Schweitzer. All were in favor, MOTION CARRIED UNANIMOUSLY.

7. DISCUSSION

Mr. Alvarado said the next POCD meeting will be held on Tuesday August 26, 2014.

A. Brookwood Village Bank Erosion - Status Report

Construction has not started yet. Because of the amount of money to repair the bank, they need to get a note from a bank. They will be presenting the note to the members on August 18th. They have a contractor ready to begin work. More information will be available at the next meeting.

B. 23 Minnie Lane – Status Report

Last year there was a cease and desist order placed on 23 Minnie Lane. An agreement has been reach between parties at 25 and 23 Minnie Lane and a plan was provided for restoration work, which was given to the Commissioners. The plan was signed off on and a permit was issued.

C. Old Main Street Bridge – Status Report

Mr. Alvarado provided pictures to the Commission showing the progress on the work. The new bridge is scheduled to re-open in November.

D. Landfill Restoration – Annual Report

Mr. Alvarado said when the restoration plan was approved it required that monitoring of the site be done yearly. The Commissioner's received pictures showing how the area is recovering from the violation. There are no signs of any activity on the site.

E. Open Space

The Town has approved the purchase of the development rights to Hayes Farm.

F. Legislation

None.

G. Conferences

None.

8. CORRESPONDENCE, COMMUNICATIONS

The Commission received copies of the proposed MS4 Regulations having to do with storm water discharge and outlet monitoring for Rocky Hill. These Regulations will incorporate environmentally friendly practices into the program.

9. OTHER BUSINESS

Commissioner Duff offered to draft a letter to Planning and Zoning and/or Planometrics endorsing low impact development in Rocky Hill and its inclusion in the POCD for the Commission to approve at the next meeting. The Open Space and Conservation Commission will have the opportunity to provide input during the updating process.

10. ADJOURN

A MOTION was made by Commissioner Kelly to adjourn the meeting. Seconded by Commissioner Zak. All were in favor, MOTION CARRIED UNANIMOUSLY.

Meeting adjourned at 9:04 p.m.

Respectfully submitted,

Eileen A. Knapp